

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**LIPCA, INC  
PETITIONER**

**VERSUS**

**DOCKET NO. 9502D**

**TIM BARFIELD, ACTING SECRETARY,  
DEPARTMENT OF REVENUE,  
STATE OF LOUISIANA  
RESPONDENT**

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**JUDGMENT  
WITH ADDITIONAL WRITTEN REASONS**

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A hearing on the Secretary's Exception of No Right of Action and Lack of Subject Matter Jurisdiction in this case was heard by the Board on July 13, 2016 with Judge Tony Graphia (Ret.), Chairman; Board Members Cade R. Cole and Jay Lobrano present, and no member absent. Participating in the hearing were: Louis C. McKnight, III, for LIPCA, INC. (the "Taxpayer"), and Miranda Y. Conner, attorney for the Secretary of the Department of Revenue (the "Secretary"). After the hearing, the case was taken under advisement, the Board now unanimously holds as follows:

Taxpayer appeals the Secretary's denial of a \$72,452.00 refundable research and development, R&D, tax credit for 2012.

Taxpayer filed its 2012 corporation income and corporation franchise tax return on or about March 13, 2013. The return showed a tax due in the amount of \$3,330.00. Taxpayer failed to remit the tax that was due. On September 23, 2013, the Secretary sent to the Taxpayer an amnesty payment voucher which stated that the taxes that were owed for 2012 were \$3,330.00 plus interest in the amount \$141.15 and penalties in the amount of \$832.50, for a total of \$4,303.65. The voucher recited that the Taxpayer could satisfy its entire 2012 tax obligation for

\$3,400.58, a savings of \$903.08 (the waived penalty and reduced interest). Taxpayer accepted the amnesty proposal and paid the Secretary the proposed \$3,400.58.

On June 26, 2015 the Taxpayer received a notice from the Louisiana Department of Economic Development (“LED”) that it had approved its application for an R&D tax credit for 2012 in the amount of \$72,452.00. This application had been pending, but it was delayed while LED checked to ensure that the Taxpayer qualified and was actually entitled to the credit.

The credit is authorized by La. R.S. 47:6015. Following the allowance of the credit, Taxpayer amended its 2012 tax return and requested the \$72,452.00 credit. The Secretary disallowed the requested credit basing its decision on the fact that Taxpayer had received the above stated benefit of the amnesty program.

The amnesty provisions are found in the Louisiana Delinquency Amnesty Act of 2013, Act No. 421 of the Regular Session of 2013. Section 3 (D) of that act states:

“(D) Participation in the amnesty program shall be conditioned upon the agreement of the taxpayer that the right to protest or initiate an administrative or judicial proceeding is barred. The agreement shall only apply to the specific tax and the tax period for which amnesty is granted.” (emphasis supplied)

The question for the Board is whether, in this matter, Taxpayer gave up its right to the \$72,452.00 tax credit in return for a waiver of \$903.08.

Taxpayer did not dispute, nor does it now dispute, that it owed \$3,330.00 in taxes, plus interest in the amount of \$141.15 and penalties in the amount of \$832.50 for 2012. The question is, under the facts of this case, whether Act No. 421 bars the Taxpayer from receiving the distinct R & D credit.

It is axiomatic that the Taxpayer did not intentionally “agree” to give up the requested credit in return for the minor amount that it received through the amnesty program. However, the ultimate question for the Board is whether this is the effect of the terms of the Amnesty Act.

The Secretary is of the opinion that requesting amnesty on any balance due prohibits the Board from hearing Taxpayer's refund denial which is wholly unrelated to the Taxpayer's amnesty.

Our courts have recognized that jurisdiction over the subject matter is the legal power and authority to hear and determine a particular class of actions or proceedings. *Smith v. Gretna Mach. and Iron Works*, 617 So.2d 144, 145 (LA. App. 5 Cir. 1993). As with all exceptions, the movant bears the burden of proving the lack of jurisdiction. *Id.*

The Supreme Court has recognized that "the Board acts as a trial court in findings of fact and applying the law". *St. Martin v. State*, 09-935, p. 6 (La. 12/1/09) 25 So.3d 736, 740. The Supreme Court also concluded that "jurisdiction to resolve tax related disputes is constitutionally and statutorily granted to the Board which is authorized to hear and decide disputes and render judgments." *Id.* at p. 8, 25 So.3d at 741.

La. R.S. 47: 1407 (1) gives the board jurisdiction to hear "All matters relating to appeals for the determination of overpayments [refunds]." The Taxpayer appeals for a redetermination of denied refund. The Secretary's exception of lack of subject matter jurisdiction is without merit and is overruled.

In regard to the exception of no right of action, the Taxpayer is clearly the party in interest who would have a right of action to appeal the assessment, and the exception is overruled.

The terms of the Amnesty Act do not explicitly prohibit the Taxpayer from receiving the requested credit. The Act does state that one who participates in the program is barred from protesting or initiating an administrative or judicial proceeding for that "specific tax and tax period."

The Secretary does not contend that Taxpayer is not otherwise entitled to the credit. It contends that the Taxpayer has given up its right to an administrative proceeding if the Secretary refuses to grant the credit. That is, the Secretary contends that she can create the need for an administrative proceeding by denying a credit that she otherwise recognizes as valid and concomitantly rely upon the anti-litigation section of the Amnesty Act as the tool to effectuate the otherwise invalid credit denial. The Board's review of the Act and its associated history informs us that this is not what the legislature intended when it included section (3) (D) in the Act.

Section 3(I) of the Act also provides that the filing of an application makes "the tax, interest, and penalty immediately due and payable...ineligible for refund, credit, or claim against the state." The Board finds that this provision is directed to the tax liability at issue in the Amnesty, preventing that tax, interest, and penalty from being clawed back via a future refund claim. This provision is not directed at a separate R & D credit that had not ripened at the time of the Amnesty. If that separate credit (which was valid but was in the pipeline waiting LED verification) had been reviewed more timely then this Taxpayer would not have needed to participate in Amnesty, it would've been owed a refund at the time of the Amnesty application.

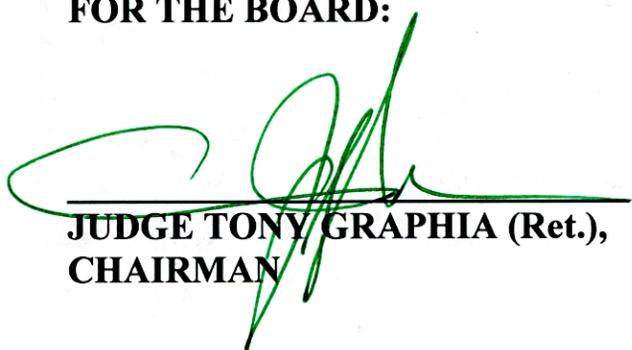
The Board has not reached the merits of this case, the Taxpayer still bears the burden of proof to show that it is entitled to this refund.

For the foregoing written reasons:

IT IS ORDERED, ADJUDGED AND DECREED that the Secretary's Exceptions of Lack of Subject Matter Jurisdiction and No Right of Action BE AND ARE HEREBY OVERRULED.

Judgment Rendered and Signed at Baton Rouge, Louisiana, this 10 day of August, 2016.

**FOR THE BOARD:**



**JUDGE TONY GRAPHIA (Ret.),  
CHAIRMAN**